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GENTRY & GENTRY ..... 1949  
GENTRY, McNULTY & KIMBLE ..... 1955  
GENTRY, McNULTY, TOCI & BOROWIEC ..... 1969  
GENTRY, McNULTY & DESENS ..... 1979  
DESENS & HITCHCOCK ..... 1986  
HITCHCOCK, HICKS & CONLOGUE ..... 1992

Docket Control  
Arizona Corporation Commission  
1200 West Washington  
Phoenix, Arizona 85007

DOCKET NO. E-01575A-01-0716

RE: Electric Capacity and Energy Agreement between Sulphur  
Springs Valley Electric Cooperative, Inc. ("SSVEC") and  
Apache Nitrogen Products, Inc. ("Apache") (the  
"Agreement"), Docket NO. E-01575A

Dear Sir/Madam:

Pursuant to A.R.S. §40-367, enclosed and filed on behalf of SSVEC is the Agreement.

Apache owns and operates an industrial facility near Benson which produces ammonium nitrate. The facility is currently served by SSVEC under a contract power agreement approved by this Commission in Decision No. 61543.

The Agreement continues the SSVEC/Arizona Electric Power Cooperative, Inc. ("AEPCO") power supply arrangement with Apache and provides certainty for Apache for the new and long term.

The Agreement is for a 15 year period with certain termination rights in Apache and SSVEC at 5 year intervals. The Agreement provides revenues in excess of costs for SSVEC. The Agreement continues the power supply relationship which otherwise would end if self-generation were elected, and gives certainty for Apache for the near and long term.

The parties request prompt review of the Agreement. Any questions concerning it may be directed to the undersigned or to Creden W. Huber, CEO, or Kirby Chapman, at SSVEC.

Sincerely,  
HITCHCOCK & HICKS

By

CHRISTOPHER HITCHCOCK


/lmr

Enclosure

cc: Mr. Creden W. Huber  
Mr. Kirby Chapman



# Sulphur Springs Valley Electric Cooperative, Inc.

A Touchstone Energy® Cooperative 

## CONTRACT POWER AGREEMENT

between

**SULPHUR SPRINGS VALLEY ELECTRIC COOPERATIVE, INC.**

And

**APACHE NITROGEN PRODUCTS, INC.**

This Contract Power Agreement ("Agreement") is entered into by Sulphur Springs Valley Electric Cooperative, Inc., an Arizona not-for-profit corporation ("SSVEC") hereinafter called the Cooperative, and Apache Nitrogen Products, Inc., a New Jersey Corporation ("ANPI"), hereinafter called the Customer.

### 1. **WITNESSETH:**

For and in consideration of the mutual covenants and agreements hereinafter contained, the parties hereto agree with each other as follows:

The Cooperative agrees to furnish to the Customer during the term of the agreement, and Customer agrees to take from the Cooperative all of the electrical energy requirements used by the Customer at the Benson, Arizona manufacturing facilities as set forth.

### 2. **TERM OUTLINED BELOW:**

Fifteen Years from May 1, 2001 until May 1, 2016. Each party has the right to cancel the contract with 90 days prior notice before the 5<sup>th</sup> and 10<sup>th</sup> anniversary (May 1, 2006 and May 1, 2011) subject to the following early termination penalty. SSVEC is subject to the Obligations of Service as set forth by the Arizona Corporation Commission (ACC) in the Certificate of Convenience and Necessity (CC&N).

### **EARLY TERMINATION PENALTY**

If contract is terminated by ANPI as outlined in 2 above, ANPI will pay an early termination penalty equal to the amount had the contract been operated at a Service Availability Charge Charge of \$9,000 per month and a rate of \$0.05440 for the first 400kWh/kW of demand and \$0.0344 for all excess kWh. This amount will be calculated at the date of termination as defined herein and calculated using the actual billing contract rate subtracted from the aforementioned rate calculation.

**3. SERVICE:**

The Cooperative shall cause the power and energy purchased by ANPI hereunder to be delivered to ANPI from the 12.47 kV distribution line emanating from the St. David Substation ("ANPI Feeder"). Metering of the ANPI Feeder for billing purposes shall be located on the power pole near the entrance of the ANPI property and shall measure power and energy delivered into the ANPI Feeder and designated as the Point of Delivery.

**4. MINIMUM BILLING DEMAND:**

The reservation of capacity contracted for by Customer under the schedule named herein shall not be less than 1800 kVA which shall be the Monthly Minimum Billing demand applicable to the schedule attached. The Cooperative will not be obligated to furnish more than 3000 kVA of capacity to ANAPI except by special supplementary agreement. This section is subject to modification by sections 12 and 20.

**5. RIGHTS OF WAY:**

The Customer agrees to allow the Cooperative to occupy such facilities and rights of way of the Customer as may be required to adequately serve Customer's requirements. The Customer agrees that the properly authorized agents of the Cooperative shall at all reasonable hours have free access at all reasonable hours to said premises for the purpose of examining, repairing or removing meters, appliances, equipment, or other appurtenances belonging to the Cooperative.

**6. PAYMENT**

The electric energy used by the Customer shall be measured by means of suitable metering equipment installed and owned by the Cooperative and the Customer agrees to pay the Cooperative monthly for the same in accordance with this contract

This contract is subject to the rate schedule, service conditions and extensions of service facilities conditions heretofore approved by the Arizona Corporation Commission and now in force and effect, except as the same may be subsequently modified, in which case the subsequent modifications after they have been duly approved by the Arizona Corporation Commission shall thereafter apply.

**7. BILLING**

Bills for power service shall be rendered monthly and will be due and payable fifteen (15) days from the date the bill is mailed and delinquent thereafter. Service is subject to a late fee and disconnect in accordance with the collection policy of the Cooperative.

**8. BILLING PERIOD**

The meter for the Customer shall be read as close to the last day of the month as practical. Except in cases beyond our control the billing period will not be less than 25 days or more than 35 days.

## 9. RATES

The monthly billing shall consist of the sum of the Service Availability Charge (1), Capacity Charge (2), Energy Charge (3), and Demand and/or PF penalty (4), all required taxes and assessments (5), set forth below:

(1) Service Availability Charge	using the following schedule:
Year 1	\$ 2,000.00
Year 2	\$ 3,500.00
Year 3	\$ 6,000.00
Year 4	\$ 8,000.00
Year 5 to 15	\$ 9,000.00

(2) Capacity Charge shall be \$9.00 per kW based on the highest of the following:

Contract minimum of 1,800 kW subject to the co-generation clause in Section 12.

Or

Actual Demand which shall consist of the highest 30 minute kW demand during the billing period.

(3) Energy Charges as follows:

Cost per kWh	Year 1	Year 2	Year 3	Year 4	Years 5-15
The first 400 kWh/kW of demand	\$.05234	\$.05343	\$.05343	\$.05362	\$.05475
All excess kWh will be	\$.03234	\$.03343	\$.03343	\$.03362	\$.03475

(4) Power Factor Penalty as described in Section 15.

(5) All required taxes and assessments imposed on the sale of electricity.

## 10. METERING

- Seller shall provide, or cause to provide, metering facilities at the Point of Delivery. Such metering facilities will shall measure and record kWh of energy, kW demand on a 30-minute basis, and kVAR flow or Power Factor.
- Seller shall test, or cause to be tested, the calibration of the meter(s) by comparison of actual standards at intervals of 36-months and shall give Customer not less than 5-working days prior notice of such testing so Customer can at its sole option witness the test. Customer shall have the right of observing, but not withstanding this right, Seller shall provide documentation to Customer of such testing. Meter(s) registering not more than plus or minus (+/-) 2% shall be deemed to be accurate. The reading of any meter which shall have been disclosed by tests as inaccurate shall be corrected for the 60 days prior to such test.
- The Customer may request a meter test at any time but, will pay for all associated testing costs if the meter is within the plus or minus (+/-) 2% of accurate.

## **11. CONTRACT CAPACITY**

In the event that the Contract Capacity is exceeded, the Customer shall pay a demand penalty to SSVEC equal to double the class A member kVA demand charge by AEPCO, unless preceded by a prior agreement.

## **12. CO-GENERATION AND CONTRACT CAPACITY ADJUSTMENTS**

If Customer installs on-site generation in excess of 600kW and requests a change in the Contract Capacity to something less than 3000kVA, the monthly minimum demand will be 75% of the adjusted contract capacity or 80% of the highest demand in the previous eleven (11) months whichever is higher. The Cooperative may also adjust the monthly minimum to cover fixed costs.

## **13. FUEL ADJUSTMENT**

The above capacity and energy charges are subject to the Wholesale Power Rate Adjustment set forth by the ACC. Any change Arizona Electric Power Cooperative Inc. make to the Class A member rates shall be passed through directly to the Customer as a fuel discount (if the rate is lowered) or fuel surcharge (if the rate is increased).

## **14. SERVICE CHARGE ADJUSTMENT**

However, in the event the COOPERATIVE makes an additional capital investment in such system solely to benefit Customer or to ensure reliable service to the Customer, and the Customer is notified of the reason the Cooperative must make the additional capital investment at least 60 days prior to any said investment, the Customer agrees to pay and COOPERATIVE shall have the right to increase its Service Availability charge over the remaining life of this contract to recover such investment. Notwithstanding this fact, the COOPERATIVE shall only be entitled to compensation for that portion not already in the COOPERATIVES accrued maintenance or capital costs, and for which the investment does not generate additional revenue for the COOPERATIVE.

Further the COOPERATIVE may adjust the Service Availability Charge on the fifth and tenth anniversary of the contracts if in the preceding five years there has been a general rate increase by the Arizona Corporation Commission for either AEPCO or SSVEC. There will be a proportionate increase in the ANPI Service Availability charge using the Rate P Service Availability Charge as a benchmark. (e.g. a 2% increase in the rate P service charge will increase the service charge of the ANPI CP Service Availability by the same 2%)

## **15. POWER FACTOR**

The Customer shall maintain the power factor of the load as close to unity as possible and not less than 95 percent lagging or leading. Historically, ANPI has met this requirement by a combination of (i) reliance on the capacitance provided by the SSVEC capacitor bank that is installed ahead of the Point of Delivery, and (ii) maintaining its power factor at a level of at least 85 percent measured at the time of its monthly Peak Demand.

In the event of a change in ANPI's operations or load so that the current SSVEC capacitor bank is no longer sufficient to maintain the power factor of at least 95 percent leading or lagging for two consecutive months, ANPI shall pay the Power Factor Adjustment Charge for second month determined as follows: The Power Factor (PF) Adjustment Charge, which shall be equal to the product of (a) the Demand Rate times (b) the Billing Demand times (c) the difference between (i) the quotient of 0.90 divided by measured PF, less (ii) 1.0.

Power Factor Adjustment = (Demand Rate) X (Billing Demand) X ((.90 ÷ measured PF) - 1)

**16. SPECIAL TAX AND ASSESSMENT CLAUSE:**

In case of an increase in rates of existing taxes of this character or additional new taxes, licenses or fees based upon generation, distribution, purchase and/or sale of electric power current or energy, shall be imposed upon or required to be paid by the Cooperative, the rates herein may be increased by a surcharge equal to the amount of the cost per kWh, or per customer or per demand, capacity, or other applicable unit of charge for such new or additional taxes, licenses or fees to be billed to and paid by the customer.

**17. DEFAULT:**

If the Customer shall default in the payment of any bill as aforesaid, or shall violate any of the terms or conditions of this agreement and after such default or violation the Cooperative shall have the right to cut off such supply of electricity on account of said default or violation. Should the Customer continue in default or violation after service has been discontinued the Cooperative may continue to withhold the supply of electricity until such time as such default in, or violation of, the terms of this agreement has been made good. Any suspension of services by the Cooperative as provided for herein shall not terminate this agreement, and the Customer hereby agrees to pay for the guaranteed minimum bill set forth in this agreement for the period during which service is suspended, in addition to any arrears which may exist.

**18. INTERRUPTIONS OF SERVICE:**

The Cooperative shall use due diligence in the operation and maintenance of its facilities so as to furnish the Customer as nearly as may be a continuous and uninterrupted supply of electric energy, but it is expressly understood and agreed that the Cooperative shall not be liable to the Customer hereunder, nor shall the Customer be liable to the Cooperative hereunder by reason of the failure of the Cooperative to deliver, or the Customer to receive, electric energy as the result of injunction, fire, strike, riot, explosion, flood, accident, breakdown, acts of God, or the public enemy, or other acts beyond the control of the party affected. This agreement is to be suspended for the time the Cooperative or the Customer is for such reason unable to carry out its part of the contract.

Furthermore, the Cooperative shall not be liable for damages occasioned by interruption of service, when such interruptions are necessary to make repairs or changes in its distribution facilities or other equipment.

**19. NON-LIABILITY:**

The Cooperative shall not be liable to the Customer for any loss, injury or damage resulting from the Customer's use of his/her equipment or from the use of the energy from the Cooperative or beyond the point of the connections of the Cooperative's wires and equipment with the Customer's wires and equipment; said point of connection is to be the point of termination of the Cooperative's service conductors. IT IS THE CUSTOMER'S RESPONSIBILITY TO PROVIDE ADEQUATE PROTECTIVE EQUIPMENT TO PROTECT THE BUYER'S EQUIPMENT FROM HIGH OR LOW VOLTAGE, PHASE REVERSALS OR SINGLE-PHASING CONDITIONS.

**20. UNCONTROLLABLE FORCES:**

- a) Other than the obligation of ANPI to pay bills submitted by SSVEC pursuant to this document, no party shall be considered to be in default in the performance of any of its obligation hereunder (except as may be otherwise specifically provided in this agreement), when a failure of performance shall be due to Uncontrollable Forces has caused failure.
- b) The term "Uncontrollable Forces" shall mean any cause beyond the control of the Party unable to perform its obligation, including, but not limited to, the causees herein set forth, which by

exercise of due diligence such Party could not reasonably have been able to overcome. Such causes are: acts of God, failure of or threat of immediate failure of facilities, explosion, flood, drought, earthquake, storm, fire, pestilence, lightning and other natural catastrophes, epidemic, war, riot, civil disturbance or disobedience, strike, labor disturbance, disputes or unrest of whatever nature, labor, material or fuel shortage, loss of business substantially affecting viability of operations, restraint by court order or public authority, and action or non-action by or inability to obtain the necessary authorizations or approvals from any governmental agency or authority.

- c) A Party shall not, however, be relieved of liability for failure of performance if such failure is due to causes arising out of its own negligence or to removable or remedial causes which it fails to remove or remedy with reasonable dispatch.
- d) Nothing herein shall require a Party to settle any strike or labor dispute in which it may be involved.
- e) In the event Seller is unable to deliver power and energy to Customer because of Uncontrollable Forces, the Seller shall not be liable to Customer for such failure. However, in such event, Seller shall only be entitled to payment from Customer for the actual metered electric power and energy delivered during the billing period including Service Charge, Demand Charge, Distribution charges, Applicable tax and Regulatory Assessment.
- f) In the event Customer is unable to take power and energy from the Seller because of Uncontrollable Forces, the Customer shall not be liable to Seller for such failure. However, in such event, Seller shall only be entitled to payment from Customer for the actual metered electric power and energy delivered during the billing period including Service Charge, Demand Charge, Distribution charges, Applicable tax and Regulatory Assessment.

## **21. MEMBERSHIP:**

The Customer shall become a member of the Cooperative, shall pay the membership fee and be bound by the provisions of the articles of incorporation and bylaws of the Cooperative and by such rules and regulations as may from time to time be adopted by the Cooperative.

## **22. REGULATION:**

This agreement shall at all times be subject to such changes or modifications as may be required by the Arizona Corporation Commission, as said Commission may from time to time direct in the exercise of their jurisdiction.

## **23. APPROVALS**

This contract is subject to approval and is not effective until approval by the Arizona Corporation Commission (ACC), the Cooperative Finance Corporation (CFC), and the Rural Utilities Service (RUS). In the event of such disapproval(s) or unacceptable requirement(s) for change or modification which are deemed unacceptable by either party, the Parties shall negotiate in good faith to modify, within 60 days of the receipt of RUS and/or ACC written notice of such disapproval or unacceptable requirement, this Agreement so as to attempt to secure all such approvals.

**24. EFFECTIVE DATE**

This contract on approval of the above agencies shall be retro-active to April 30, 2001. Service shall be provided to the Customer at the previously approved Contract Power rate dated August 1, 1993 until this contract is ratified by the ACC, CFC, and RUS.

**25. SIGNATURES**

This agreement cancels and supersedes all previous agreements or contracts relating to the supply of the service described herein, and no agreement or representation made by any representative of the Cooperative or Customer, not incorporated herein, shall be binding upon either party. There will be no Assignment and Assumption of this agreement without the prior written approval of the Cooperative.

This agreement shall be binding upon the successors of the parties hereto.

Accepted by  
**SULPHUR SPRINGS VALLEY  
 ELECTRIC COOPERATIVE, INC.**

By \_\_\_\_\_

**Creden W. Huber**  
 Its Chief Executive Officer

**APACHE NITROGEN  
 PRODUCTS, INC.**

**Robert Cashdollar**  
 Chief Executive Officer

STATE OF Arizona )

COUNTY OF Cochise )

Before me, K. Gene Shull, a Notary Public in and for the County of Cochise, State of Arizona, on this day personally appeared Robert E. Cashdollar Sr. known to me to be the person(s) whose name(s) \_\_\_\_\_ subscribed to the foregoing instrument, and acknowledged to me that \_\_\_\_\_ executed the same for the purpose and consideration therein expressed.

Given under my hand and seal this 6<sup>th</sup> day of August, 2001.

K. Gene Shull

NOTARY PUBLIC

August 22, 2003

MY COMMISSION EXPIRES

